

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION SUBCOMMITTEE MEETING

Call to Order: By **SEN. KELLY GEBHARDT**, on March 24, 2003 at 7:30 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Kelly Gebhardt (R)
Sen. Mike Wheat (D)
Rep. Sylvia Bookout-Reinicke (R)

Members Excused: None.

Members Absent: None.

Staff Present: Drew Livesay, MDT/MCS;
Russ Ritter, MRL;
Pat Keim, BNSF;
Mike Halligan, MRL;
Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary
Rebecca Sattler, Transcription of Minutes

Please Note: These are summary Subcommittee minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 218

EXECUTIVE ACTION ON HB 218

The Subcommittee went over the gray bill (Exhibit 1) and the amendment (Exhibit 2). This bill deals with the escort and fees for transporting radioactive waste. **Pat Murdo** went through the bill as it would be with Section 5 still in; they would address it later as if Section 5 were left out.

EXHIBIT (sts62a01)

EXHIBIT (sts62a02)

CHAIRMAN GEBHARDT asked if the railroads carry safety equipment with their shipments. **Pat Keim** answered that they have an entire security detail in the air and on the ground, shadowing the shipment. **Russ Ritter** added that any time the train stops, immediately there is a perimeter of security people around the train until the train leaves.

CHAIRMAN GEBHARDT stated that if that is the case, there is no need to invest in safety equipment.

Pat Murdo explained that if the disaster and emergency equipment services were left in the bill, the agency could prioritize how they wanted it. **REP. BOOKOUT-REINICKE** said that they should take it out. **Pat Keim** stated that the wording "emergency response" gives them flexibility as needed.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.6}

Pat Murdo continued through the bill. **SEN. WHEAT** had a question regarding why a section should be taken out. **Pat Keim** explained that there is a federal act that covers exactly what the bond would have covered.

SEN. WHEAT asked if that legislation had a limitation on the amount of money that could be accessed in the event of an accident or a spill. **Pat Keim** stated that he did not know of a limitation. **Mike Halligan** said that he didn't know specifically, and would research that issue. **Pat Murdo** read a section of the amendment on HB 2, Section 204, Department of Energy, Liability Issues, to clarify the situation.

{Tape: 1; Side: A; Approx. Time Counter: 5.6 - 9.6}

SEN. WHEAT summarized that the federal government will require the owner of the transporter to cover a certain amount in the event of a spill, and the federal government would cover the rest, up to \$10 billion. **Mike Halligan** agreed.

Pat Murdo had a question regarding the title of the bill, if Section 5 is left in. She continued going through the sections of the bill and the changes that had been made. **CHAIRMAN GEPHARDT** explained why he wanted to strike "emergency response" on Page 3, Line 9. The Committee continued going through the bill and discussing the changes as noted on the bill.

SEN. WHEAT asked Pat Keim if they were comfortable with the wording of the safety plan. **Pat Keim** responded that he is comfortable with the wording if the amendments are included.

{Tape: 1; Side: A; Approx. Time Counter: 9.6 - 18.2}

Pat Murdo continued through the bill. **SEN. WHEAT** asked if they could include a section in the safety plan regarding the funds that would be available for emergency situations. **Pat Keim** stated that Line 6 delineates that the owner is covered by a federal insurance program, and wondered if that would suffice. **SEN. WHEAT** agreed. **Mike Halligan** agreed that they are okay with the language.

Mike Halligan asked if the reclamation bond language is still in the body of the bill. **SEN. WHEAT** stated that he would make sure it would be taken out, if it is not already.

{Tape: 1; Side: A; Approx. Time Counter: 18.2 - 21.6}

Pat Murdo continued with the explanation of the bill. **Mike Halligan** added that the carriers have to carry more than \$5 million in insurance. **SEN. WHEAT** said that the State is going to have to rely on the regulating federal authorities; they will not be able to test the casks.

Pat Murdo explained Section 6, Page 4. **SEN. WHEAT** added that notification ought to be taken care of in the safety plan. The Department can also require other specifics to be included in the safety plan as they desire.

Mike Halligan had a question regarding Lines 22-23 on Page 4. He asked if a truck were transporting the material, if the Public Service Commission needed to be notified along with the highway patrol. **CHAIRMAN GEPHARDT** added that the language should read "or" instead of "and." **SEN. WHEAT** added a different option for the language.

{Tape: 1; Side: A; Approx. Time Counter: 21 - 26.8}

Pat Murdo continued on Page 5 of the bill. **CHAIRMAN GEBHARDT** commented that the nuclear companies might want to make a cask that weighs 5,000 pounds and have the material stored. He suggested that the fee should be modified. **Pat Murdo** explained the reasoning for the fee, stating that it includes the situation if the cask is placed in a truck bed and then placed on a train.

CHAIRMAN GEBHARDT discussed the fees regarding different casks. **Pat Keim** said that there could be as much response cost and risk with a cask weighing 600 pounds as with one weighing 6,000 pounds. He stated that the intent is to develop an account to deal with those emergency situations.

{Tape: 1; Side: A; Approx. Time Counter: 26.8 - 30}

CHAIRMAN GEBHARDT stated that at least the record would show that they discussed the issue, to leave the door open to later discussion. **Mike Halligan** explained that the legislature does not like to put moneys into statute. It is best to allow the road-making agencies to set fees pursuant to the costs they incur.

REP. BOOKOUT-REINICKE said that she originally drafted the bill to avoid challenge by the Department of Energy. She stated that she went to court in Illinois and this language has already been challenged. **SEN. WHEAT** suggested to leave the bill the way it is for now.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.5}

Drew Livesay said that this is under the Department of Transportation's responsibility. They are comfortable with establishing fees for the weight of the vehicle, but not for this type of activity. His intent is that the bill be left in the form the gray bill, with the amendments.

CHAIRMAN GEBHARDT summarized that it might be a good idea to leave the fees as they are now, and revisit the issue in a later session.

Pat Murdo continued on Page 5, Line 17. **SEN. WHEAT** added that other states do have a "one trip" load language section.

CHAIRMAN GEBHARDT also commented on the Department of Transportation (DOT).

SEN. WHEAT asked if it should be specified that the movement is by truck only on Line 16. **Pat Murdo** said that her understanding is that DOT collects all of the fees, so this would apply to all fees, regardless of whether it is by railroad or truck.

{Tape: 1; Side: B; Approx. Time Counter: 2.5 - 7.2}

Pat Keim added that he is not aware of any fees the DOT collects from the railroad. **Pat Murdo** said that the title of the bill states that DOT collects the fees, so that might need to be changed. **REP. BOOKOUT-REINICKE** clarified that DOT issues all permits; no other department would have that capability.

SEN. WHEAT stated that it is such a specialized permit that it makes sense to have it all done in one place.

Pat Murdo continued through the bill on Page 5, Line 30 through Page 6, Line 11. **Pat Keim** said that all railroad inspections are done under the Federal Railroad Administration, so citations would be issued under federal law. **SEN. WHEAT** asked about the inspections and the safety plan (Line 22, Page 5). He would like to add a requirement for the safety plan to comply with all federal inspections.

{Tape: 1; Side: B; Approx. Time Counter: 7.2 - 11.1}

REP. BOOKOUT-REINICKE said that it was agreed with the railroad that the PSC would go to the last place the train stopped. She is concerned with getting the funding for the program. **SEN. WHEAT** stated that it is covered in New Section 10, Page 7, Line 5.

Mike Halligan said that they are afraid that their trains will be stopped in various states for alleged inspections. They are worried about being stopped by terrorists or others without a permit. **CHAIRMAN GEBHARDT** agreed on the risk.

SEN. WHEAT said that it is fairly common to have derailments. He wanted to ensure that there is a prior federal inspection of the tracks as well. **Pat Murdo** referred him to Line 6-7, Page 7. **Mike Halligan** added that there are many technological advances to regulate the workings of the railroad; he is amazed that a train ever derails, and that it isn't very common.

{Tape: 1; Side: B; Approx. Time Counter: 11.1 - 14.9}

Russ Ritter added that Montana Rail Link has been singled out nationally as the safest railroad in the U.S. and received an award in Washington, D.C. **SEN. WHEAT** explained that his point was that derailments do happen, however infrequent.

Pat Murdo continued on Page 6, Line 25; Page 7, Lines 9-10; and changes on Page 8.

SEN. WHEAT asked if in the federal statute, absolute liability is already considered to be in place, thereby nullifying the need for Section 12. **Mike Halligan** agreed.

SEN. WHEAT said that the underlying reason for putting in that section was for liability clarification in the event of an accident. **Mike Halligan** said that the federal government will revisit the issue to determine levels of liability.

REP. BOOKOUT-REINICKE stated that she thinks the issue could be challenged by the DOE; she doesn't want the bill challenged in court.

Pat Murdo continued on Page 8, Line 20, regarding the effective date. **SEN. WHEAT** asked if they want the bill to take effect October 1. **Mike Halligan** stated that they wanted to ensure proper time for all to comply. He stated his doubt that DOT or PSC could get it done if the date is pushed earlier to July 1.

{Tape: 1; Side: B; Approx. Time Counter: 14.9 - 22.7}

SEN. WHEAT asked if DOT can adopt rules between the end of the session and October 1, or if they need to push this out to July 1, 2004. **Drew Livesay** answered that it is going to involve rule-making between at least three or four state agencies. He thinks it will be a pretty complicated rule-making process, and they would appreciate as much time as possible.

SEN. WHEAT asked if the date should be moved to July 1, 2004.

REP. BOOKOUT-REINICKE expressed her desire to keep it at October 1, 2003. A compromise was made and the Committee agreed to give until January 1, 2004 to make the changes.

SEN. WHEAT asked about Section 11, and if the Department of Justice has the capability to handle the fines. **Drew Livesay** said that they have the ability to develop fines that deal with commercial vehicle situations. This fine is dealing with a penalty after a chemical spill; they don't have the ability to give out that type of fine.

SEN. WHEAT added that if that type of spill were to occur, it would be a serious problem; he would prefer that the legal department of the State deal with it. **REP. BOOKOUT-REINICKE** said that most of the violations would be in the trucking industry. They are regulated by the highway patrol, which is part of the Department of Justice. **Pat Keim** inserted that the attorneys for the State are technically deputy attorney generals as well.

Pat Murdo summarized that the effective date is January 1, 2004.

SEN. WHEAT asked if those present feel comfortable with the condition of the bill now. Everyone agreed in the affirmative.

Pat Murdo quickly summarized the final changes.

{Tape: 1; Side: B; Approx. Time Counter: 22.7 - 27.9}

CHAIRMAN GEBHARDT referred to the emergency response on Page 3, Line 9 and stated that he talked with Jim Green. Mr. Green felt that regardless of which agency responded, it would still be for an emergency response. **CHAIRMAN GEBHARDT** said that if they send the money to the responding agency, they could divide it up. He added that there is currently a separation in the budget, but that it could be left as it currently is.

Pat Murdo continued the recap of the changes.

SEN. WHEAT clarified that the Subcommittee wishes to adopt the amendments and that Section 5 is deleted.

CHAIRMAN GEBHARDT said that the Subcommittee needs a recommendation for the full committee.

Motion/Vote: **SEN. WHEAT** moved that HB 218 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote.

The Subcommittee will take that recommendation to the full Senate State Administration Committee.

CHAIRMAN GEBHARDT closed the hearing on SB 218.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 3.5}

ADJOURNMENT

Adjournment: 9:00 A.M.

SEN. KELLY GEPHARDT, Chairman

REBECCA SATTLER, Transcriptionist

KG/RS

EXHIBIT (sts62aad)